IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 13502 of 2004

Between:

Dr. Rupavath Ramdas, S/o. Jayaram, Scheduled Tribe,
aged 36 years, VSR & NVR College, Tenali, Guntur District.

.....PETITIONER

AND

1 Osmania University, rep by its Registrar, Hyderabad.
2 Government of A.P. rep by its Secretary, Higher Education,
Secretariat, Hyderabad.
3 University Grants Commission, Rep by its Chairman,
Bahadur Shah Zafar Marg, New Delhi.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly in the nature of writ of mandamus declaring that the action of the first Respondent in not taking steps to relax the qualifications suitably for the backlog S.T. Post of Associate Professor in Political Science notified for the third time in Advt. No. 2/2003, dated 7.8.2003 amounts to arbitrary and unlawful refusal to exercise beneficent power, and further directing the first Respondent to take steps forthwith to that end.

Counsel for the Petitioner:MR.K.BALAGOPAL

Counsel for the Respondent No.1 : Mr.Deepti Battachary

Counsel for the Respondent No.2 : GP FOR EDUCATION

Counsel for the Respondent No.3 : Mr.A Rajasekhar Reddy

The Court made the following :

ORDER:

The Petitioner is working as a Lecturer in V.S.R & N.V.R. College, Tenali, Guntur District. In pursuance of a notification of the first respondent vide Advertisement No. 2/2003, dated 07.08.2003 regarding the filling up of 65 backlog vacancies reserved for Scheduled Castes and Scheduled Tribes category including a post of an Associate Professor in Political Science, he applied for the same. The applicants were not called for interview on the ground that they do not possess the requisite qualifications for the Post of Associate Professor in Political Science including the petitioner. The post of Associate Professor in Political Science, which is reserved for Scheduled Tribes was notified thrice, but the first respondent could not get the qualified candidate for the said post. As per the notification, the candidates must possess Phd, NET and five years teaching experience at the degree level. As the first respondent is reluctant to relax the qualifications, the post remained unfilled for seven years. The petitioner contends that if a reserved post is not filled in three successive attempts, it is liable to be de-reserved and notified afresh. If that happens the Scheduled Tribe community will lose a valuable opportunity. To obviate this, the first respondent should take steps to relax the qualifications suitably, keeping in view the qualifications of the candidates available. But, despite repeated requests, the first respondent is refusing to consider the request for relaxation of the qualifications. The learned Counsel for the petitioner draw the attention of this Court, a judgment of the Supreme Court in Indira Sawhney Vs. Union of India wherein the Court held as follows:

i. The power of relaxation is co-extensive with the power to give

reservations under Art 16(4);

ii. Reservations as well as relaxation can be given by any instrumentality of the State, such as the first Respondent; and

iii. The purpose of relaxation is 'to ensure full availment of provisions of reservations'.

The learned Counsel for the petitioner further submits that Section-53 of the A.P. Universities Act empowers the University acting through the Executive Council to make ordinances prescribing qualifications for teachers. Reading that provision with the view taken by the Supreme Court in the matter of relaxation of qualifications would serve the purpose of 'full availment of reservation'. The petitioner further contends that the first respondent has ample power to effect the relaxation with the prior approval or permission of the respondents 2 and 3 if necessary. The petitioner therefore approached this Court seeking a direction to the first respondent to take necessary steps for relaxation of the qualifications of the candidates for filling up of the backlog post of Associate Professor in Political Science reserved for Scheduled Tribe candidates. The material placed by both parties indicate that the candidates who made the applications in response to the notification for filling up of the vacancy of the Associate Professor in Political Science do not possess the requisite qualifications. The assertion made by the petitioner that the said post is notified on three occasions i.e., in 1997, 2000 and 2003 is not denied by the first respondent and the post remained unfilled for the last seven years.

In the light of the above circumstances, the judgment rendered by the Supreme Court in Indira Sawhney Vs. Union of India, the first respondent is directed to examine and take a decision regarding the request of the petitioner for the relaxation of the qualifications of the candidates belonging to Scheduled Tribe for the Post of the Associate Professor in Political Science, in the interest of the institution and to fill up the vacancy of the Associate Professor in Political Science reserved for Scheduled Tribes lying vacant since seven years in its endeavour to render justice to the candidates belonging to the Scheduled

Tribes.

Accordingly, the writ petition is disposed of.

25-10-2004

MRKR

To

1. The Secretary, Higher Education, Government of Andhra Pradesh, Secretariat, Hyderabad.

2.Two C.Cs to the Government Pleader for Education, High Court Buildings, Hyderabad.(OUT)

3.2CD copies.

4. The Registrar, Osmania University, Hyderabad.

5. The Chairman, University Grants Commission,

Bahadur Shah Zafer Marg, New Delhi.